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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/740,375

Filing Date: December 19, 2000

Appellant(s): ZELLNER ET AL.

Charles W. Griggers
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/19/07 appealing from the Office action mailed

5/19/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0102993 Hendrey Aug 1, 2002

5,794,210 Goldhaber Aug 11, 1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrey (2002/0102993).

Claim 21, 26: Hendrey discloses:

Sending first information about a location of the user to a content provider that provides web content to the wireless communication device (Fig. 1; Fig. 2; Paragraphs [5, 53])

Sending an indication to the content provider when the location is continuously changing (Fig. 1; [38, 41]);

Searching a database of location specific advertisements and selecting a location specific advertisement relevant to the user (Fig. 1; [32, 33, 34]),

tracking a first one of a plurality of location-specific advertisements that is associated with the location of the user and tracking that the user is at a stable location that is not continuously changing ([45, 47, 48]).

Hendrey does not explicitly disclose that the advertisements are sent when the user's location is stable. However, Hendrey discloses tracking the user being both moving and stable (see above citations), that particular indications concerning advertisements can be made when the user's location is stable at certain areas ([47]), that the various features and embodiments of the Hendrey disclosure can be

utilized for targeting advertisements ([53]), that there are many variations and factors for targeting a user ([32, 33, 34, 58]) and that there are many possible variations of the Hendrey disclosure ([66]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the information in Hendrey's Fig. 1, including whether the user is moving or the location is stable, can be utilized for targeting the user. One would have been motivated to do this in order to better target the user with items of interest. Also, one would have been motivated to do this in order to better target users who are passing near stores or in buildings nearby stores or are proximate to stores and also to better utilize the time and location information for targeting users and for determining whether to send advertising and repeat advertising to users or not.

In regards to claim 26, Hendrey further discloses utilizing a variety of position determining methods or technologies and also that user location information can be sent periodically ([44, 47]). Notice that the location is monitored over a period of time. Hence, the location is not continually monitored but monitored at different periods in time and, hence, periodically. Also, the utilization of different location determining methods or technologies allows to Hendrey to continually monitor location information, monitor location with very short (seconds or microseconds) periodical feedback of user location, or with longer periodical feedback of user location.

Claims 22-25, 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrey (2002/0102993) in view of Goldhaber (5,794,210).

Claim 22, 23, 27-30: Hendrey further discloses targeting users based parameters, filters, preferences, and profiles ([32, 35, 37]) and hiding certain information about users ([3]).

Hendrey does not explicitly disclose not transmitting an indication of the identity of the user.

Goldhaber further discloses targeting users with content based on geographic areas (col 2, lines 27-35; col 15, lines 15-21) and that user geographic area information is known (col 13, lines 5-11).

Goldhaber discloses profiling a user, targeting content or advertising to a user based on known user information, maintaining user privacy, that user's can release user identifying information if the user so chooses (Abstract, second half; col 6, lines 22-45; col 7, lines 61-67; col 14, lines 10-17).

Goldhaber further discloses obtaining second information about the identity of the user for a fee (col 6, line 64-col 7, line 5; col 17, lines 20-26; col 14, lines 7-10).

Goldhaber further discloses the user indicating preferences for content to be received (Fig. 7; Fig. 10).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Goldhaber's user being able to control the user's profile to Hendrey's targeting a user based on a user profile. One would have been motivated to do this in order to better send content of interest to the user.

Claims 24, 25: In regards to claims 24, 25, Hendrey discloses that the user can be tracked as to being home or at work and that this indicates information relative to advertisements ([47])

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and that the user can be targeted based on profile or preference or other information (see citations in preceding claims).

Hendrey does not explicitly disclose that the user can indicate geographic areas to receive or not receive content.

However, Goldhaber discloses that the user can indicate criteria that is to be utilized for delivering content and/or a criteria that is to be used to prevent certain content from being delivered (Fig. 10, item 124; col 6, lines 45-61). Notice that the profile includes items to send and/or not to send and that the user can edit the profile at any time and in any manner.

Goldhaber further discloses that different servers can serve different geographic areas as well as a variety of other interest areas (col 15, lines 17-31) and that the user can indicate as interested or not interested the different interest areas of the different servers (Fig. 10).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Goldhaber's indicating whether to receive content or not based on different criteria and geographic area as a criteria to Hendrey's particular location relative advertisements and targeting a user based on a variety of criteria. One would have been motivated to do this in order to better present content of interest to the user.

(10) Response to Argument

Examiner notes that the prior art Hendrey renders obvious the features of the Appellant's independent claim 1.

In reference to independent claim 1, the prior art Hendrey renders obvious

sending first information about a location of the user to a content provider that provides web content to the wireless communication device (Figure 1);

sending an indication to the content provider when the location is continuously changing (Figure 1; [47, 48]);

searching a first database containing a plurality of location-specific advertisements (Figure 1);

selecting a first one of the plurality of location-specific advertisements that is associated with the location of the user and is desired to be sent to the user at a stable location that is not continuously changing (Figure 1; [47, 48]); and

sending the first one of the plurality of location-specific advertisements to the wireless communication device over a communication network when the location is stable and not continuously changing (Figure 1; [47,48]).

And, the preceding is obvious in light of the rejection above.

On page 9 of the Appellant's Appeal Brief dated 4/19/2007, Appellant states:

"obviousness has not been established since, since a reference has not been cited that discloses at least 'selecting a first one of the plurality of location-specific advertisements that is associated with the location of the user and is desired to be sent to the user at a stable location that is not continuously changing; and sending the first one of the plurality of location-specific advertisements to the wireless communication device over a communication network when the location is stable and not continuously changing'".

However, Examiner notes that a 35 USC 103 rejection was made utilizing Hendrey and that it is stated above that Hendrey renders obvious the features of the Applicant's claims.

And, Examiner notes that it must be presumed that the artisan knows something about the art apart from what the references disclose. *In re Jacobv*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art apart from what the references disclose. *In re Jacoby*. Also, the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint of suggestion a particular reference. *In re Bozek*, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. *In re Bode*, 550 F.2d 656, USPQ 12 (CCPA 1977).

Also, when there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under §103.

And, if a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, §103 likely bars its patentability. Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. *KSR Int'l Co. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007).

And, in this case, Examiner notes that Hendrey's Fig. 1 discloses that a mobile user interacts with a store and that communication system can be utilized that combines a prospect tracking manager, a location sensitive advertising content generator, a location tracking subsystem, and an advertising effectiveness database (Fig. 1).

Hendrey further discloses that the location, proximity, movement or cessation of movement of a user can be tracked or monitored (Fig. 2; [47, 48]):

"[0047] A first technique is to monitor the general location of MU 110 over a period of time to see if traveling of the prospect ceased in the general vicinity of store 100 even if insufficient positioning accuracy is available to determine whether the prospect visited the store or merely stopped nearby it. This provides suggestive evidence that the advertisement caused the user of MU 110 to stop and shop at store 100 even if no purchase is recorded or there is insufficient information to tie a purchase to the user of MU 110. Preferably, such cessation of motion is screened for false alarms if the area in which such cessation took place was historically common, for example indicating the location of the user's work or home location.

[0048] A second technique is to monitor the travel direction of MU 110 to see if it reacts to the advertisement. For situations in which user intent is being inferred from movement data, the accuracy of the locating technology need only be good enough to determine movement trends. For example, if an advertisement is triggered when a prospect is within a predetermined radius of the business, such as 500 meters, the locating technology need only be accurate enough to determine a positive reaction from a prospect if it can tell that the prospect has moved toward the sponsoring business' store, for example entering within a 100 meter radius of the store using a locating technology with 100 meter accuracy even if the store is much smaller than

100 meters in size. To refine this scenario further, cessation of movement could be detected within such a minimum radius for a duration of time consistent with either making the desired transaction or investigating the advertised product. Such a duration of time could be, for example, the time it would take for the prospect to park a car, walk to the store, and find the merchandise, and could be customized for each business.

Also, Examiner notes that Hendrey distinguishes when a user is near a store or passing a store or stationary and near a store ([41]).

Also, Examiner notes that the Hendrey disclosures states that the subsystems of Fig. 1 can each by themselves be a variant of the Hendrey invention ([53, 54]). And, the standard Hendrey variant is the entire system and capabilities of Fig. 1 (see claim 1; Fig. 1; and the Hendrey disclosure). Also, Examiner notes that repeat advertising can be sent to the user ([40], “In one embodiment the well-known concept of hysteresis in either time or location would be used to prevent the generation of another advertising message to a customer who has just responded to an advertisement and has not yet left the area used to trigger advertising”). Note that this citation from paragraph [40] indicates that Hendrey can prevent repeat messages to users based on user time and location information. Hence, this citation also indicates that repeat advertising can be sent to the user and it implies that time and location information could be used for determining whether to send a repeat advertising message or not.

And, Examiner notes that in Fig. 1, that the information in each system/subsystem of item 105 is available to each other system/subsystem in item 105. Also, each item/system/subsystem in Fig. 1 has a two way connection between each other item/system/subsystem over which information can be communicated.

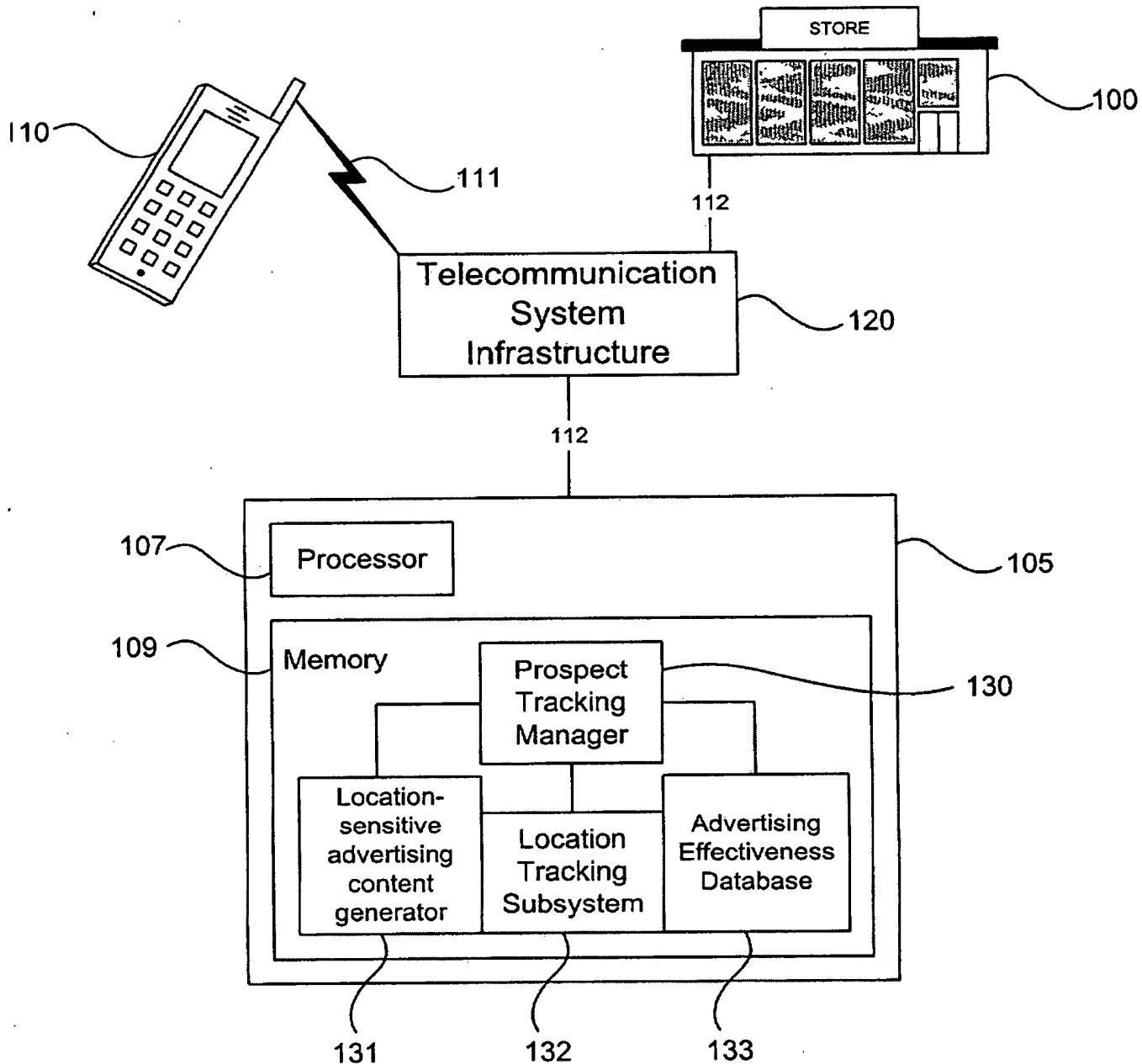


FIG. 1

Hence, Hendrey discloses targeting users based on location information (Figure 1; and, Abstract, “Accurate location information about a mobile telecommunication transceiver is used to generate advertising content”). Hendrey further discloses that location information concerning the user also includes movement and cessation of movement information and that location,

movement, and cessation of movement information concerning the user is monitored or tracked (Figure 1; [47, 48]). And, Hendrey discloses that the Advertising Effectiveness Database (Fig. 1, item 133) can utilize the movement and cessation of movement information contained in the Location Tracking Subsystem (Fig. 1, item 132). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the Location sensitive advertising content generator (Fig. 1, item 131) can also utilize the information available, including the movement and cessation of movement information, contained in the Location Tracking Subsystem (Fig. 1, item 132). One would have been motivated to do this in order to better target users who are passing near stores or in buildings nearby stores or are proximate to stores and also to better utilize the time and location information for targeting users and for determining whether to send advertising and repeat advertising to users or not.

Also, in regards to hindsight reasoning arguments on page 10, Examiner notes that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, in regards to hindsight reasoning, Examiner notes that rigid preventative rules that deny factfinders recourse to common sense are neither necessary under our case law nor consistent with it. KSR Int'l Co. v. Teleflex, Inc., No 04-1350 (U.S. Apr. 30, 2007).

Hence, Hendrey renders obvious the features of the Appellant's claims.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Arthur Duran

Primary Examiner

5/24/2007

Conferees:

Eric Stamber 

Vincent Millin 